

MAINE HARNESS RACING COMMISSION

MINUTES OF MEETING

March 14, 2014

Gambling Control Board Conference Room

Department of Public Safety Building

45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, James Tracy, Gary Reed and Michael Timmons. Absent: Dirk Duncan.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, Zachary Matzkin and Carol Gauthier.

The minutes were not available.

ADJUDICATORY HEARINGS:

1. None.

UNFINISHED BUSINESS:

1. Commissioner Dresser stated that they need to determine whether the Commission wishes to schedule a disciplinary hearing regarding a complaint filed by the Maine Harness Horsemen's Association regarding the condition of the racetrack at Scarborough Downs on December 6, 7 and 21, 2013. Mr. Jackson stated that he has a report for the Commission. Commissioner Dresser stated that since they haven't had enough time to absorb the report she asked Mr. Jackson to give them a recap in his words as to what his recommendation was. Mr. Jackson stated that he spoke with Dennis May, State Racing Steward, Charles Malia, Associate Judge, Peter Tommila, Presiding Judge, and track manager, Steve Cobbett trying to find out what happened on those three days that the complaint was filed. In his discussion with the four individuals, it was agreed on December 6th that the track was not in the best of shape. However, they started working the track first thing in the morning. It was considered to be useable by post time at noon. At the same time, they did call a meeting with the horsemen's representative, the track management and the presiding judge. They discussed the condition of the track and it was a unanimous decision to go forward. As the races continued during that day the conditions improved. On the 7th there was no discussion as to whether or not the track was safe. There was no need to have a meeting to determine whether they should go forward with racing. They did race on the 7th. On the 21st, in the morning the track was hard. At post time when they started the track apparently had warmed up and the track started to break a little bit and by the end of the third race there was a discussion with management and the officials, and they let the track be worked a little bit longer and then they proceeded with the 4th race the starting gate driver and the starting judge both indicated to management that the track was beginning to break and they would try one more but they weren't sure it would be good. They did go with the 5th race and determined after the start of the 5th race that they would cease racing because the track was unsafe at that point. It would be his recommendation whereby that the horsemen continued to race. They apparently didn't feel the track was unsafe on the 6th and 7th and the beginning of the 21st. It would be his recommendation not to go forward with an adjudicatory hearing to determine if there should be any sanctions taken. However, if the condition of the track doesn't improve this year that they can come back and visit before the Commission and rely on what the current conditions are as to what's going to happen. In addition to that, he thinks that any time that the dates are awarded to a racetrack and they're unable to use those dates because of weather they should be allowed to make up those dates to provide an opportunity for the horsemen to race any of those purse monies. The unfortunate part of it

is if they can't race on a Friday, Saturday or Sunday you don't really have time for the Commission to reopen the race date hearings and assign a different date. He would like to be given that authority to the Chair and the Executive Director to work out an opportunity for them to race on another day with management. Commissioner Dresser asked how that would work at the end of the year. Mr. Jackson stated that unfortunately it is when you get into that last week you're not going to be able to make it up. Commissioner Dresser stated so they can't be made up at any time. Mr. Jackson stated no not during that current year, but if you wanted to add an additional day the following year you can request that and make it a condition. Commissioner Dresser asked if the purse monies would be carried over. Mr. Jackson stated yes. Actually the purse monies are carried over what they don't use any way. Commissioner Dresser asked Attorney Guay before we have a discussion is there any direction you'd like us to head in. Attorney Guay asked Mr. Jackson should we proceed to adjudication. Mr. Jackson stated no. Not at this time. Commissioner Dresser stated that she would like to know what the thoughts of the other Commissioner members. She thinks we are on the verge of a safety issue here and from what she's seeing it seems to be related not only to weather but also to a lack of materials on the track. Does that jive with what you understand? Mr. Jackson stated that there is little material available during the month of December to maintain that track. He believes and he didn't get an absolute answer because he didn't ask the question but he has been led to believe that money was a factor as to why they didn't have an abundance of material to put on the track. However, with his discussions with Mr. Cobbett this year they have already begun loading the track with materials in preparation for not only qualifying but racing at the end of this month. Commissioner Dresser stated that being said qualifiers they have already been canceled twice because of track conditions. Mr. Jackson stated yes but he thinks it is more weather than track conditions. Commissioner Dresser stated that it was posted publicly as track conditions. Mr. Jackson stated that he hasn't seen that. Commissioner Dresser stated that her feeling is with all due respect to Mr. Jackson's presented his report based on her recommendation that they use safety as a determining factor. She thinks that this warrants moving forward given all the circumstances. She would be interested in what the others think. Commissioner Tracy stated that he has mixed feelings in regards to it, but he does know that trying to maintain a track in December is terrible. Probably the track should have had more stone dust available. Whether that would have done the job is still a question mark he's sure. He really feels that given the circumstances that they should not precede to an adjudicatory hearing over this matter. It would appear that the track is trying to do everything it can to try to get it ready for the spring. This could happen because the weather this winter has been horrid. He thinks it's time to move forward. Commissioner Reed stated that he feels that from the written report Mr. Jackson gave them and his verbal report all interested parties, from the horsemen and the association were involved in the unanimous decision. He was not there and he could not testify to the status of the track but these folks who make their living there were there and unanimously decided to proceed. Horsemen were giving the opportunity to scratch if they chose not to race. He thinks that everything that could be done was done. Is there a possible safety issue? He thinks that there certainly is and perhaps if we emphasize our concern about that and urge track management to do everything they can to improve the quality of the track he would not be supportive of doing anything further. Commissioner Timmons stated that the safety part of it is the key to the whole deal everyone knows that. The racetrack knows that it needs to be safe when they get ready to race. He guest he could think about this as it's been discussed everyone's had their turn at looking at that situation. If the management right now can say that they have adequate materials there, and that the next time without blaming weather that they're ready to race that it's going to be safe and ready to be that way fine. If we come back here after the first month of racing and that's not the case he would certainly have a different opinion. He would go along with Commissioner Reed and Commissioner Tracy on what has been said as long as it's understood that management hears that they have the responsibility with the racing dates that have been giving to them to have the track so that it's safe. He will go along with

Commissioner Dresser on the safety issue. Commissioner Dresser asked Attorney Guay if it would be appropriate today for us to have an informal discussion, we have Ms. Ireland from the MHHA and Mr. Cobbett from the Downs just to have hopefully a positive discussion as to what we'd like to see happen. Attorney Guay stated that what he thinks were the various permutations here. What the question is what would the consequence be if this complaint is going to be considered any time in the future for example if at the next relicensing there is a condition placed on Scarborough's license that they maintain x, y or z. Then he thinks that you need to have findings and he doesn't think that this report is sufficient findings. He thinks you need to have an opportunity for Scarborough to present evidence and for the complainant to present evidence, and he thinks that the Commission would have to weigh the evidence and make a finding. If there is a finding made clearly that finding could be used subsequently during the licensing process whether or not there would be other remedies available prior to that he's not sure sitting here today. He does know if you do want to have this considered as part of the licensing then you would have to have a hearing. You would have to give notice and this report and anything that Mr. Jackson just said is not evidence. This is his investigation. He almost thinks this is a threshold issue of whether or not that's where you want to go. If not then an alternative that you have would be to issue a letter of concern or some type of informal letter to Scarborough. The Commission could direct the executive director to do that. He doesn't think that you could do that on your own. Mr. Jackson could take under advisement to send a letter to Scarborough asking them to have x, y or z. If you head that direction and preliminary to doing that you want to have a discussion then that's ok, but in his opinion if you start that discussion as the Commissioners with the complainant and with the licensee you're kind of tainting yourself to be able to actually do a hearing on the facts. Commissioner Dresser stated that maybe it might just be semantics but it seems that the consensus is that we not proceed with the hearing on this particular complaint. Could we have another discussion about what's going to happen in the future? Attorney Guay stated yes but you would not be able to use that as a basis during a licensing hearing. Commissioner Dresser stated that if we don't pursue any thing with the complaint relating to December. Attorney Guay stated that you would not be able to site it in your order on licensing of Scarborough. You could not say that on December 6th, 7th and 21st the conditions were not sufficient therefore it is ordered for the next race dates. You would not be able to do that in his opinion. That's his major concern before you engage in this. Mr. Jackson stated that if there were any issue that arose in 2014 that could be addressed. Attorney Guay stated yes, absolutely. Commissioner Dresser stated that that was what she was getting at, if we make this determination today that we're not going to pursue anything for that. Attorney Guay stated that he wanted to be absolutely clear before the Commissioners' start engaging the complainant and the licensee that you understand that because once you start the discussion he thinks if you then you decide to go to hearing then either party would be able to move for recusal of the Commissioners because you've injected yourself in the discussion. Commissioner Dresser stated that the thing for them to do is to formally make the determination that we're not going to have a hearing but then she would like to have a discussion about what our expectations are for this upcoming year. Commissioner Timmons stated that isn't it already crystal clear in the when we awarded the dates to the fair, or to Bangor or to Scarborough that all of it's spelled out in there quite clear what the conditions need to be to get that license in the first place. Attorney Guay stated that you could have an additional condition. The statute allows you to place additional conditions other than. Commissioner Timmons stated that the conditions are already in there. Commissioner Dresser stated that Mr. Jackson suggestion that we perhaps require that they make a makeup. Attorney Guay stated that they have a reserve of material at the track for example. You could theoretical you could order that. Commissioner Timmons stated that what you're saying is we could start fresh in 2014 and it wouldn't have to do with this. Mr. Jackson stated that Commissioner Timmons you are absolutely right. In the statute and the rules there is a prevision that you will adhere to, however the Commission has to make a determination as to whether they did not

and that's when the complaint part comes and that's when you find if there was a violation of whatever was outlined in the statute or the rule. Then the sanctions can be imposed. They know what they're supposed to do. He has to prove they didn't. He agrees with Commissioner Dresser going forward with the discussion so they will have some idea of where we are going. Commissioner Dresser stated what our expectations are like the horsemen. She asked for a motion. Commissioner Tracy made a motion to not go forward with a disciplinary hearing regarding the complaint as filed. Commissioner Reed seconded. Vote 4-0. After the vote, a discussion was conducted with Steve Cobbett from Scarborough Downs, Wendy Ireland representing the Maine Harness Horsemen's Association, Commission members and Henry Jackson. Commissioner Reed stated that his preference would be to direct the executive director to send a letter to Scarborough Downs addressing their concern. Commissioner Tracy concurs with Commissioner Reed. Attorney Guay stated that a vote was not necessary.

REPORTS:

- a. Mr. Jackson stated that Dr. Richard Sams, chemist at the Kentucky laboratory is coming to the Calumet Club for a presentation on March 18, 2014 regarding the drug testing program. He stated that he would like to congratulate the MHHA for getting this accomplished, and that he would strongly suggest that the Commission members attend to get as much information on the drug testing program as they can.
- b. Mr. Jackson reported to the Commission members that the Maine State Harness Racing Commission will be conducting a Judges School on April 14, 2014 at the Deering Building in Augusta, Maine. The presentation will be with TC Lane and Kent Hastings from the United States Trotting Association. Commissioner Dresser asked if people that are not judges can they attend and will he be sending out notices to them. Mr. Jackson stated that people can attend, but the judges need to register for the accreditation and he will send out notices.

OTHER BUSINESS:

1. None.

Public Comment:

Ms. Ireland stated that she attended a HHI meeting that TC Lane from the USTA did a presentation on the online entry system. This is to go live at the end of the month. She hopes that he will present this at the Judges School on April 24, 2014.

Commissioner Tracy made a motion to adjourn the meeting. Commissioner Timmons seconded. Vote 4-0.

The meeting adjourned at 10:30 a.m.

Respectfully submitted by:
Henry W. Jackson
Executive Director